

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

BARBARA VARNER,	:	Civil Action No. 1:01-CV-725
	:	
Plaintiff,	:	
	:	
v.	:	
	:	JURY TRIAL DEMANDED
COMMONWEALTH OF	:	
PENNSYLVANIA , NINTH JUDICIAL	:	
DISTRICT, CUMBERLAND COUNTY,	:	
CUMBERLAND COUNTY,	:	
S. GARETH GRAHAM, individually,	:	
and JOSEPH OSINKARSKI,	:	
individually,	:	
	:	
Defendants.	:	
	:	

FILED
HARRISBURG, PA
DEC 19 2003
MARY E. D'ANDREA, CLERK
Per [Signature]
Deputy Clerk

**MOTION OF DEFENDANT S. GARETH GRAHAM
FOR SUMMARY JUDGMENT**

Defendant S. Gareth Graham (“Graham”), by and through his counsel, moves this Court pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment in favor of Defendant Graham and against Plaintiff Barbara Varner (“Plaintiff”). In support of his motion, Graham avers as follows:

1. On April 26, 2001, Plaintiff filed a Complaint against Defendants Commonwealth of Pennsylvania, Ninth Judicial District, Cumberland County (“Court”) and Cumberland County (“County”), alleging violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e (a) and (b) on the basis of sex, and against Defendants Joseph Osenkarski (“Osenkarski”) and Graham, alleging that they aided and abetted the Court and County, in violation of the Pennsylvania Human Relations Act, 43 P.S. §955(a).
2. On October 14, 2001, Graham filed an Answer in which he denied Plaintiff’s allegations.

3. The parties have participated in nearly 3 years of discovery, including 20 witness depositions – three of whom are judges – and the production of numerous documents.

4. Yet, Plaintiff has not produced evidence to support the claim against Graham that he aided and abetted the Court or County in creating a hostile work environment on the basis of sex.

5. Plaintiff's claim against Graham fails as a matter of law for the following reasons:

a. Plaintiff has presented no evidence whatsoever to support her claim that Graham "aided and abetted" or "conspired" with County or Court officials.

b. Plaintiff was not subjected to a hostile work environment or discriminated against *because of her sex*. Rather, multiple witnesses, including Plaintiff, have alleged that Graham was excitable and temperamental toward a number of employees, female *and male*.

c. The handful of alleged instances of harassment, most of which do not involve sex-related conduct, do not, as a matter of law, rise to the requisite level of "pervasive and severe."

d. Plaintiff suffered no detrimental job consequence because she lost no pay or benefits, was not demoted or transferred; rather she remained in her position and has received pay increases, and missed no time from work.

6. Plaintiff's claim also fails for procedural reasons as she failed to exhaust her administrative remedies as to Graham and thus her claim is time-barred. Specifically, Plaintiff, with the assistance of counsel, filed an administrative complaint with the Equal Employment Opportunity Commission in 1999, naming only the Court and the County as respondents. Graham was not named as a party, nor did he have a "commonality of interest" with the named respondents. Both the Court and County disclaim Graham as their employee, and Graham was not permitted to participate in the agency proceeding and/or defend against Plaintiff's allegations against him.

7. In support of this Motion for Summary Judgment, Graham incorporates the attached Memorandum of Law.

WHEREFORE, Defendant S. Gareth Graham respectfully requests that this Court enter judgment in his favor as a matter of law because there are no genuine issues of material fact remaining for trial.

Respectfully submitted,

Date: 12/19/03

By: 

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Attorney for Defendant,
S. Gareth Graham

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COMMONWEALTH OF PENNSYLVANIA , NINTH JUDICIAL DISTRICT, CUMBERLAND COUNTY, CUMBERLAND COUNTY, S. GARETH GRAHAM, individually, and JOSEPH OSENKARSKI, individually,	:	
	:	
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FILED
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DEC 3 9 2003
MARY E. DOWNEY
Per _____
Deputy Clerk

CERTIFICATE OF CONCURRENCE/NON-CONCURRENCE

In accordance with Local Rule 7.1 of the Local Rules of the United States District Court for the Middle District of Pennsylvania, undersigned counsel affirms that he contacted counsel for Plaintiff and counsel for Defendants Commonwealth of Pennsylvania, Ninth Judicial District, Cumberland County, and Joseph Osenkarski. Debra Wallet, Esquire, counsel for Plaintiff, does not concur in this Motion. A. Taylor Williams, Esquire, counsel for Commonwealth of Pennsylvania, Ninth Judicial District, Paul Dellasega, Esquire, counsel for Cumberland County, and Paul Lancaster Adams, counsel for Joseph Osenkarski, concur in this Motion.



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